

Message Text

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P R 211730Z JUL 76

FM AMEMBASSY BONN

TO SECSTATE WASHDC PRIORITY 0586

INFO USMISSION USBERLIN

C O N F I D E N T I A L SECTION 01 OF 04 BONN 12329

E.O. 11652: GDS

TAGS: PGOV PFOR WB US UK FR GW

SUBJECT: BONN GROUP PAPER REQUESTED BY FOREIGN

MINISTERS AT OSLO MEETING

REF: (A) BONN 11654; (B) SECTO 13054

1. WE HAVE COMPLETED A DRAFT OF THE POSITION PAPER FOR BRIEFING OTHER GOVERNMENTS ON THE BERLIN SITUATION AND WILL TABLE IT IN THE BONN GROUP ON JULY 22. THE ENTIRE TEXT OF OUR DRAFT IS PROVIDED BELOW FOR ADDRESSEES' INFORMATION.

2. BEGIN TEXT.

I. INTRODUCTION

SINCE THE ENTRY OF THE FRG INTO THE UN IN SEPTEMBER, 1973, AND THE CONSEQUENTLY GREATER ACTIVITY OF THE FRG IN THE INTERNATIONAL SPHERE, THE RELATIONSHIP BETWEEN THE FRG AND WEST BERLIN HAS ON OCCASION COME TO THE ATTENTION OF THIRD STATES.

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THE GOVERNMENTS OF FRANCE, THE UK, AND THE US, AS

WELL AS THAT OF THE FRG, DEEM IT OF GREAT IMPORTANCE THAT THIRD COUNTRIES BE INFORMED OF THE LEGAL AND POLITICAL SITUATION WITH RESPECT TO THE ENTIRE CITY OF BERLIN AND THIS PARTICULAR RELATIONSHIP BETWEEN THE FRG AND WEST BERLIN. THIS PAPER HAS BEEN PREPARED WITH THE AIM OF PROVIDING A FACTUAL BASIS FOR REFERENCE REGARDING THESE MATTERS. BEYOND THIS, AMERICAN, BRITISH, AND FRENCH AUTHORITIES WOULD BE PLEASED TO DISCUSS WITH THIRD COUNTRIES SPECIFIC DEVELOPMENTS RELATING TO BERLIN.

II. THE RIGHTS OF THE FOUR POWERS WITH RESPECT TO BERLIN

THE RIGHTS OF THE FOUR POWERS -- FRANCE, THE UK, THE US, AND THE USSR -- DERIVE FROM THE TOTAL DEFEAT OF THE THIRD REICH IN 1945 AND THE SUBSEQUENT ASSUMPTION BY THE POWERS OF SUPREME AUTHORITY IN GERMANY. THIS DEFEAT AND ASSUMPTION OF AUTHORITY WERE JOINT UNDERTAKINGS IN WHICH THE PARTICIPANTS WERE DEEMED TO HAVE EQUAL STANDING. THE RIGHTS OF EACH POWER EXIST INDEPENDENTLY AND UNDERLIE THE SERIES OF AGREEMENTS WHICH SPECIFY THE AREAS IN WHICH AND THE METHODS BY WHICH THOSE RIGHTS ARE TO BE EXERCISED. SPECIFICALLY, THESE AGREEMENTS INCLUDE:

-- PROTOCOL ON THE ZONES OF OCCUPATION IN GERMANY AND THE ADMINISTRATION OF GREATER BERLIN, AS AMENDED, OF SEPTEMBER 12, 1944, WHICH PROVIDES FOR A "SPECIAL BERLIN AREA, WHICH WILL BE UNDER JOINT OCCUPATION BY THE FOUR POWERS.";

-- AGREEMENT ON CONTROL MACHINERY IN GERMANY, AS AMENDED, OF NOVEMBER 14, 1944, WHICH PROVIDES THAT "AN INTER-ALLIED GOVERNMENT AUTHORITY (KOMMANDATURA) ... WILL BE ESTABLISHED TO DIRECT JOINTLY THE ADMINISTRATION OF THE 'GREAT BERLIN' AREA."; AND

-- DECLARATION REGARDING THE DEFEAT OF GERMANY AND THE ASSUMPTION OF SUPREME AUTHORITY BY THE ALLIED POWERS, OF JUNE 5, 1945, WHICH STATES THAT THE FOUR POWERS "HEREBY ASSUME SUPREME AUTHORITY WITH RESPECT TO GERMANY (AND THEY) ... WILL HEREAFTER DETERMINE THE STATUS OF

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GERMANY OR ANY AREA AT PRESENT BEING A PART OF GERMANY."

AN INTER-ALLIED KOMMANDATURA OF THE FOUR POWERS WAS SUBSEQUENTLY ESTABLISHED "FOR THE PURPOSE OF EXERCISING THE JOINT ADMINISTRATION OF BERLIN" AND IT ASSUMED CONTROL OVER THE CITY OF BERLIN ON JULY 11, 1945. THE KOMMANDATURA CONTINUED TO FUNCTION ON A QUADRIPARTITE BASIS FOR ALL OF BERLIN UNTIL JULY 1,

1948, WHEN THE SOVIET AUTHORITIES WITHDREW. THEREAFTER,
THE KOMMANDATURA HAS BEEN ABLE TO CARRY OUT ITS
DECISIONS ONLY IN THE THREE WESTERN SECTORS BERLIN

(WSB), WHICH MAKE UP WHAT IS COMMONLY KNOWN AS WEST
BERLIN.

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NEVERTHELESS, THE QUADRIpartite RIGHTS RELATING
TO GREATER BERLIN CONTINUE IN EFFECT UNCHANGED AND THE
CORRESPONDING AGREEMENTS
CONTINUE TO BE BINDING UPON ALL FOUR SIGNATORIES SO LONG
AS THEY HAVE NOT BEEN REPLACED AS A RESULT OF FOUR-POWER
NEGOTIATIONS.

III. THE FRG AND BERLIN

BECAUSE QUADRIpartite RIGHTS REGARDING BERLIN CON-
TINUE IN EFFECT AND NO SUPERSEDING FOUR-POWER AGREEMENTS
HAVE BEEN CONCLUDED, THE STATUS OF GREATER BERLIN

REMAINS WHAT IT WAS ON JUNE 5, 1945, WHEN THE FOUR POWERS ASSUMED SUPREME AUTHORITY. CONSEQUENTLY, UPON ESTABLISHMENT OF THE FRG IN 1949, THE AMERICAN, BRITISH, AND FRENCH AUTHORITIES OF THE THREE WESTERN SECTORS OF BERLIN NOTIFIED THE FRG THAT BERLIN WOULD NOT BE GOVERNED BY THE FRG. SUBSEQUENTLY, THE BERLIN CONSTITUTION OF 1950 WAS APPROVED BY THE ALLIED KOMMANDATURA (AK) AND APPLIED IN THE THREE WESTERN SECTORS WITH THE RESERVATION
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THAT UNTIL AN OVERALL RESOLUTION TO THE PROBLEM OF GERMANY AND BERLIN WAS REACHED BERLIN SHALL NOT CONSTITUTIONALLY BE A LAND OF THE FRG. THAT IS, UNTIL SUCH RESOLUTION CAN BE AGREED, BERLIN SHALL NOT BE A CONSTITUENT PART OF THE FRG. NEVERTHELESS, WITHIN THE FRAMEWORK OF THE CONTINUING STATUS OF GREATER BERLIN AND THE 1950 BERLIN CONSTITUTION, THE AK HAS EXPRESSLY AGREED TO A SPECIAL RELATIONSHIP BETWEEN THE FRG AND WEST BERLIN.

FOR EXAMPLE, THE AK DECLARED ON FEBRUARY 23, 1952, THAT BERLIN AUTHORITIES WERE AUTHORIZED TO ADOPT FEDERAL LAWS IN BERLIN BY MEANS OF A GENERAL COVERING LAW. ON MAY 21, 1952, THE AK STATED THAT "IT HAS NO OBJECTION TO THE INCLUSION OF BERLIN IN INTERNATIONAL TREATIES AND UNDERTAKINGS OF THE FEDERAL REPUBLIC ... AS FAR AS POSSIBLE" AND UNDER CERTAIN CONDITIONS, AND ALSO DECLARED THAT THE FRG COULD INCLUDE REPRESENTATIVES OF THE SENATE OF BERLIN IN ITS INTERNATIONAL DISCUSSIONS. THE ALLIES ALSO AUTHORIZED THE FRG "TO ENSURE REPRESENTATION OF BERLIN AND OF THE BERLIN POPULATION OUTSIDE BERLIN," AND AUTHORIZED BERLIN TO DESIGNATE A SMALL NUMBER OF NON-VOTING REPRESENTATIVES TO ATTEND MEETINGS OF THE FRG BUNDESTAG AND BUNDESRAT.

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THE TIES CONNECTING BERLIN TO THE FRG, FRANCE, GREAT BRITAIN, AND THE US IN 1954 DECLARED THEY WOULD CARRY OUT THEIR RIGHTS RELATING TO BERLIN IN SUCH A WAY AS TO FACILITATE THE FRG'S UNDERTAKING A WIDE RANGE OF MEASURES, WITHIN THE FRAMEWORK OF THE STATUS OF GREATER BERLIN, TO STRENGTHEN AND REINFORCE WEST BERLIN IN ALL FIELDS SO AS TO HELP GUARANTEE THE CONTINUED VIABILITY OF THE WESTERN SECTORS. AMONG THESE MEASURES WAS THE LOCATION OF SOME FRG GOVERNMENTAL OFFICES IN WEST BERLIN WHICH, IN KEEPING WITH THE STATUS OF BERLIN, WERE NOT EMPOWERED TO ACT IN EXERCISE OF DIRECT STATE AUTHORITY OVER THE THREE SECTORS.

EXISTENCE OF THESE FRG OFFICES IN WEST BERLIN IS ONE
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ASPECT OF WHAL HAS COME TO BE KNOWN AS THE FRG "FEDERAL
PRESENCE" IN BERLIN AND IS ONE MANIFESTATION OF THE TIES
WHICH EXIST BETWESN THE FRG AND WEST BERLIN.

BODIES REPRESENTING AN ENTIRELY SEPARATE CATEGORY
OF ORGANIZATION -- PRIVATE INSTITUTIONS (SUCH AS A
SPORTS ACADEMY AND A FOUNDATION FOR INTERNATIONAL
COOPERATION AND DEVELOPMENT) WHICH RECEIVE SUPPORT FROM
PUBLIC FRG MONIES -- HAVE ALSO BEEN FOUNDED IN WEST
BERLIN. THESE EXIST UNDER CIVIL LAW IN FORCE IN BERLIN
AND ARE NOT A PART OF THE FRG "FEDERAL PRESENCE" SINCE
BY THEIR VERY NATURE THEY ARE NOT GOVERNMENTAL BODIES.

ANOTHER MANIFESTATION OF THE TIES BETWEEN THE FRG
AND WEST BERLIN AS WELL AS OF THE REPRESENTATION ABROAD
BY THE FRG OF THE INTERESTS OF THE THREE WESTERN SECTORS
ARE VISITS TO WEST BERLIN BY FOREIGN HEADS OF STATE AND
OTHER OFFICIALS AND DIGNITARIES. ON THE OCCASION OF
VISITS BY SUCH PERSONAGES O THE FRG, THE FEDERAL GERMAN
GOVERNMENT AND BERLIN SENAT OFTEN ISSUE INVATIONS FOR
A VISIT TO BERLIN AS WELL. SUCH VISITS ARE IMPORTANT
CONTRIBUTIONS TO WEST BERLIN MORALE AND ARE WELCOMED NOT
ONLY BY THE FRG AND SENAT BUT BY FRANCE, THE UK AND US.

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C O N F I D E N T I A L SECTION 03 OF 04 BONN 12329

THE QUADRIPARTITE AGREEMENT (QA) SIGNED IN BERLIN ON SEPTEMBER 3, 1971, BY REPRESENTATIVES OF FRANCE, THE UK, US, AND USSR "ACTING ON THE BASIS OF THEIR QUADRI-PARTITE RIGHTS AND RESPONSIBILITIES, AND OF THE CORRESPONDING WARTIME AND POSTWAR AGREEMENTS AND DECISIONS OF THE FOUR POWERS, WHICH ARE NOT AFFECTED," CONFIRMED THE SPECIAL FRG-WEST BERLIN RELATIONSHIP WHEN IT DECLARED THAT "THE TIES BETWEEN THE WSB AND THE FRG WILL BE MAINTAINED AND DEVELOPED, TAKING INTO ACCOUNT THAT THESE SECTORS CONTINUE NOT TO BE A CONSTITUENT PART OF THE FRG AND NOT TO BE GOVERNED BY IT."

IN THE QA THE FOUR SIGNATORY POWERS CONFIRM THAT INTERNATIONAL AGREEMENTS AND ARRANGEMENTS ENTERED INTO BY THE FRG MAY BE EXTENDED TO THE WSB PROVIDED (A) THAT IT IS DONE IN ACCORDANCE WITH ESTABLISHED PROCEDURES, (B) THAT MATTERS OF SECURITY AND STATUS ARE NOT AFFECTED, AND (C) THAT THE EXTENSION OF SUCH AGREEMENTS AND ARRANGEMENTS IS SPECIFIED IN EACH CASE. THESE CONDITIONS CONFORM TO THOSE LAID DOWN BY THE AK IN 1954, AND THE CONFIDENTIAL

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KOMMANDATURA, IN EXERCISE OF ALLIED RIGHTS FOR BERLIN, ENSURES BY MEANS OF THE ESTABLISHED PROCEDURES THAT THE OTHER TWO PROVISOS NOTED JUST ABOVE ARE MET.

THE FOUR POWERS ALSO ENDORSED IN THE QA REPRESENTATION BY THE FRG OF THE INTERESTS OF THE WSB IN INTERNATIONAL ORGANIZATIONS AND INTERNATIONAL CONFERENCES AND ACKNOWLEDGED THAT BERLINERS MAY PARTICIPATE JOINTLY WITH PARTICIPANTS FROM THE FRG THEREIN, SO LONG AS MATTERS OF SECURITY AND STATUS ARE NOT AFFECTED. HERE ALSO, PROVISIONS OF THE QA FOLLOW FROM AUTHORIZATIONS LONG GRANTED BY THE AK.

IV. CLARIFICATION OF UNWARRANTED CLAIMS REGARDING FRG ACTIONS

IT HAS OCCASIONALLY BEEN ASSERTED BY SOME STATES THAT ONE TREATY OR ANOTHER ENTERED INTO BY THE FRG MAY NOT BE EXTENDED TO BERLIN, OR THAT THE FRG MAY NOT REPRESENT ABROAD IN A SPECIFIC CASE THE INTERESTS OF THE WSB. USUALLY THESE ASSERTIONS ARE BASED ON THE CONTENTION THAT MATTERS OF SECURITY OR STATUS WOULD THEREBY BE AFFECTED OR THAT THE FRG USED IMPROPER TERMINOLOGY (I.E., REFERRED TO "LAND BERLIN") IN ITS DECLARATION ON THE MATTER.

REGARDING TERMINOLOGY, NEITHER THE QA NOR ANY OTHER AGREEMENT OF THE FOUR POWERS IMPOSES ANY REQUIREMENT REGARDING TERMINOLOGY TO BE USED BY THE FRG. IN ANY CASE, USE BY THE FRG OF ANY TERMINOLOGY CANNOT AFFECT FOUR POWER AGREEMENTS OR DECISIONS RELATING TO BERLIN.

WITH RESPECT TO STATUS AND SECURITY, THE ESTABLISHED PROCEDURES REFERRED TO ABOVE ARE DESIGNED, INTER ALIA, TO AFFORD THE AK THE OPPORTUNITY TO ENSURE THAT THE TREATIES CONCLUDED BY THE FRG WHICH ARE TO BE EXTENDED TO BERLIN ARE EXTENDED IN SUCH A WAY THAT MATTERS OF SECURITY AND STATUS ARE NOT AFFECTED. LAW IN FORCE IN BERLIN MAKES A GENERAL RESERVATION WITH RESPECT TO MATTERS WHICH MIGHT AFFECT SECURITY AND STATUS IN ANY CONFIDENTIAL

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TREATY EXTENDED TO THE WSB. FURTHERMORE, WHEN AUTHORIZING EXTENSION TO BERLIN OF TREATIES WHICH MAY CONTAIN PROVISIONS RELATING TO SECURITY AND STATUS, WHEN THEY DEEM IT NECESSARY THE AK IN EXERCISE OF ALLIED SUPREME AUTHORITY MAKES RESERVATIONS ON SPECIFIC PROVISIONS. THE FACT OF THESE RESERVATIONS IS NOTED BY THE FRG WHEN DEPOSITING ITS INSTRUMENT OF RATIFICATION.

RECENTLY, A NEW UNWARRANTED ASSERTION HAS BEEN MADE WITH RESPECT TO INCLUDING IN AN FRG DELEGATION AN INDIVIDUAL WHO IS AN OFFICIAL OF AN FRG OFFICE LOCATED IN WEST BERLIN. THE ASSERTION IS THAT THIS INDIVIDUAL MAY NOT REPRESENT THE FRG IN A UN BODY SINCE HIS OFFICE SHOULD NOT BE LOCATED IN WEST BERLIN. HOWEVER, IN ACCORDANCE WITH THE SPECIAL RELATIONSHIP BETWEEN THE FRG AND WSB WHICH GOES BACK TO THE TIME OF FOUNDING THE FRG, AND WHICH WAS ENDORSED IN THE QA AS NOTED ABOVE, FRG OFFICES HAVE BEEN LOCATED IN THE WSB SINCE THE LATE 1940S. THE QA SIMPLY CONFIRMS THE PREVIOUS ARRANGEMENT EFFECTED BY THE AK THAT STATE BODIES OF THE FRG SHALL NOT PERFORM ACTS IN THE WSB

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IN EXERCISE OF DIRECT STATE AUTHORITY OVER THESE SECTORS. THUS, THE LOCATION OF FRG OFFICES IN WEST BERLIN IS PERMISSIBLE AND IT IS CLEAR THAT AN ASSERTION SUCH AS THAT NOTED ABOVE IS WITHOUT FOUNDATION.

V. CONCLUSION

THE RIGHTS OF THE FOUR POWERS (FRANCE, GREAT BRITAIN, THE US AND USSR) WITH RESPECT TO GREATER BERLIN, WHICH DERIVE FROM VICTORY IN 1945 AND ASSUMPTION BY THE FOUR OF SUPREME AUTHORITY, CONTINUE UNTIL A SOLUTION TO THE FUNDAMENTAL PROBLEM HAS BEEN AGREED FOLLOWING FREE NEGOTIATIONS. THE FOUR POWERS, IN FACT, CONTINUE TO EXERCISE THEIR QUADRIPARTITE RIGHTS AND RESPONSIBILITIES IN ALL FOUR SECTORS OF GREATER BERLIN.

THE AK CONTINUES AS THE MECHANISM FOR THE EXERCISE OF FOUR POWER SUPREME AUTHORITY IN BERLIN. SINCE THE WALK-OUT OF THE SOVIET REPRESENTATIVES, OF COURSE, ITS DECISIONS CAN BE APPLIED ONLY IN THE WESTERN SECTORS.

NEVERTHELESS, AS THE EXECUTOR OF SUPREME AUTHORITY, IT
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IS THE AK, WITHIN THE FRAMEWORK OF THE SPECIAL STATUS
OF GREATER BERLIN AND IN ACCORDANCE WITH QUADRIPARTITE
AGREEMENTS, ARRANGEMENTS, AND PRACTICES, WHICH IS THE
FINAL AUTHORITY FOR BERLIN INCLUDING MATTERS RELATING
TO THE SPECIAL RELATIONSHIP BETWEEN THE FRG AND THE
WESTERN SECTORS.

AS NOTED ABOVE, THE QUADRIPARTITE AGREEMENT SIGNED
BY REPRESENTATIVES OF THE FOUR POWERS IN BERLIN ON
SEPTEMBER 3, 1971, ENDORSED THIS SPECIAL RELATIONSHIP
IN GENERAL AND SPECIFICALLY ENDORSED MANY OF ITS
PARTICULAR MANIFESTATIONS. TREATIES AND OTHER INTER-
NATIONAL UNDERTAKINGS OF THE FRG MAY BE EXTENDED TO
BERLIN UNDER SPECIFIED CONDITIONS AS ADMINISTERED BY THE
AK, BERLINERS MAY PARTICIPATE IN FRG INTERNATIONAL
DELEGATIONS, AND THE FRG MAY, AS SPECIFIED, ENSURE THE
REPRESENTATION ABROAD OF THE INTERESTS OF THE WESTERN
SECTORS. AND, SO LONG AS NO ACT IN EXERCISE OF DIRECT
FRG STATE AUTHORITY OVER THE WSB IS INVOLVED, THE FRG
MAY -- AS IT HAS SINCE THE LATE 1940S -- HAVE
GOVERNMENTAL OFFICES LOCATED IN WEST BERLIN.

THE GOVERNMENTS OF FRANCE, THE UK AND THE US WOULD
AGAIN LIKE TO EXPRESS THEIR READINESS TO DISCUSS AND
PROVIDE MORE INFORMATION ON MATTERS RELATING TO BERLIN.
THESE GOVERNMENTS AND THE GOVERNMENT OF THE FRG WISH TO
EXPRESS THEIR APPRECIATION TO THIRD STATES WHICH
RECOGNIZE AND SUPPORT THE SPECIAL RELATIONSHIP BETWEEN
THE FRG AND WEST BERLIN AS A BASIC REQUIREMENT OF THE
CONTINUED VIABILITY OF THE WESTERN SECTORS AND AS A
FACTOR IN THE CONTINUED STABILITY OF CENTRAL EUROPE.
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